

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Wayne Willette
Cheri Willette

NOTICE OF HEARING AND
MOTION FOR RELIEF FROM
AUTOMATIC STAY

Debtors

Chapter 7, Case No. 04-60984

TO: Wayne Willette and Cheri Willette, INCLUDING TRUSTEE AND OTHER
INTERESTED PARTIES

1. New Century Mortgage Corporation, ("Movant"), a corporation, by its attorneys, moves the Court for the relief requested below and gives notice of hearing.

2. The Court will hold a hearing on this motion at 1:00 pm on October 26, 2004, in Courtroom 2, 118 South Mill Street, Fergus Falls, MN 56537 or as soon thereafter as counsel can be heard.

3. Any response to this motion must be filed and delivered not later than on October 21, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 15, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.

4. This court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334, FRBP Nos. 5005 and Local Rule 1070-1. This is a core proceeding. The Chapter 7 case was filed on August 19, 2004, and is now pending in this court.

5. This motion arises under 11 U.S.C. § 362 and Federal Rules of Bankruptcy Procedure 4001, and is filed under Federal Rules of Bankruptcy Procedure 9014 and Local Rules 1201-1215. Movant requests relief with respect to the property of Debtors, subject to a mortgage to Movant.

6. Debtors above-named are the owners of certain real property located at 21636 North Pearl Lake Road, Detroit Lakes, MN 56501. Movant's mortgage encumbers the homestead only, not the agricultural land near and around it. The homestead is legally described as:

The westerly 600.00 feet of Government Lot 5 of Section 11, Township 138 North, Range 42 West of the Fifth Principal Meridian in Becker County, Minnesota, less the northerly 600 feet of said westerly 600.00 feet, said westerly 600.00 feet is measured at a right angle to and is parallel with the west line of said Government Lot 5 and said northerly 600.00 feet is measured at a right angle to and is parallel with the north line of said Government Lot 5.

SUBJECT TO an easement for public road purposes over, under and across that part of the southerly portion of the above tract which lies within 33.00 feet of the centerline of an existing public road as said existing public road is located and established on February 16, 2000.

7. The indebtedness of Wayne Willette and Cheri Willette is evidenced by a Promissory Note and Mortgage dated April 13, 2000, filed of record in the Becker County Recorder's office on April 25, 2000, and recorded as Document No. 159159. A true and correct copy of the front page of the recorded mortgage is attached as Exhibit A. Said mortgage was subsequently assigned to Movant.

8. The Debtors have failed to pay monthly mortgage payments since July 1, 2004, and are in default in the amount of \$7,927.84 together with reasonable attorneys fees and costs incurred pursuant to the note and mortgage. Debtors have failed to make any offer of adequate protection. Accordingly, Movant's interest is inadequately protected.

9. The total amount due under the mortgage and note as of the date of hearing is \$182,753.72.

10. The Becker County Assessor's Office has estimated the value of the homestead only as \$159,000.00, and accordingly, Debtors have no equity in the premises and the property is not necessary to an effective reorganization.

11. By reason of the foregoing, Movant is entitled to have the automatic stay lifted and vacated so it can recommence the mortgage foreclosure action pursuant to Minnesota Statutes.

WHEREFORE, Movant by its undersigned attorney, moves the Court for an Order that the automatic stay provided by 11 U.S.C. Section 362 (A) be terminated to permit Movant to foreclose its mortgage on the subject property, and for such other and further relief as may be just and equitable.

Dated: September 29, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Wayne Willette
Cheri Willette

Debtors

AFFIDAVIT OF PETITIONER

Chapter 7, Case No. 04-60984

STATE OF California)

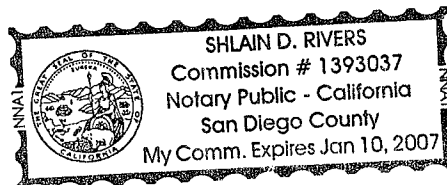
COUNTY OF San Diego)

Rolan Williams, being first duly sworn, deposes and states on oath that she/he is employed by Chase Manhattan Mortgage Corporation, the movant in this action, that she/he has read the annexed Notice of Hearing and Motion for Relief From Automatic Stay, and that it is true of her/his knowledge to the best of her/his information.

Rolan Williams

Subscribed and sworn to before me this
31 day of August 2004.

Shlain D. Rivers
Notary Public



459159Registration tax hereon of \$ 414.00paid, Treasurer's Receipt No. 46611Rita A. Thompson

Becker County Treasurer

Countersigned 17.0125.003Heithrich Brekken

Becker County Auditor

AwackerBECKER COUNTY RECORDER, STATE OF MN
Document No. 459159Date APR 25 2000 12:30 P.M.I hereby certify that the within instrument
was recorded in the office of Becker
County Recorder.M.M. MartinsonCounty Recorder see Dpty.

NEW CENTURY MORTGAGE CORPORATION
18400 VON KARMAN, SUITE 1000
IRVINE, CA 92612
Loan Number: 0000369488

[Space Above This Line For Recording Data]

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on **April 13, 2000**
The mortgagor is
WAYNE A. WILLETTE AND CHERI L. WILLETTE , HUSBAND AND WIFE

("Borrower"). This Security Instrument is given to
NEW CENTURY MORTGAGE CORPORATION, A CALIFORNIA CORPORATION

which is organized and existing under the laws of **CALIFORNIA**, and whose
address is **18400 VON KARMAN, SUITE 1000**
IRVINE, CA 92612

("Lender"). Borrower owes Lender the principal sum of

One Hundred Eighty Thousand and No/100 -----
Dollars (U.S. \$ **180,000.00**).

This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which
provides for monthly payments, with the full debt, if not paid earlier, due and payable on
May 1, 2030

and for interest at the yearly rate of **10.4500**

percent. This Security Instrument secures to Lender: (a) the repayment of
the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the
payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security

MINNESOTA-Single Family-FNMA/FHLMC UNIFORM INSTRUMENT**VMP** -6H(MN) (9702)Form 3024 9/90
Amended 12/93

Page 1 of 8

Initials: W.W.

VMP MORTGAGE FORMS - (800) 521-7291

✓ chg
paid
well
non / std
extra



CMLT

0000369488

DUU \ 217

MAY

1999

CPL

Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender, with power of sale, the following described property located in **BECKER** County, Minnesota:
SEE LEGAL DESCRIPTION ATTACHED HERETO AND MADE A PART HEREOF.

A.P.N.: 17-0125-003

which has the address of **21636 NORTH PEARL LAKE ROAD**, **DETROIT LAKES**
 Minnesota **56501** (Zip Code) ("Property Address");

[Street, City],

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal and Interest; Prepayment and Late Charges. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. Funds for Taxes and Insurance. Subject to applicable law or to a written waiver by Lender, Borrower shall pay to Lender on the day monthly payments are due under the Note, until the Note is paid in full, a sum ("Funds") for: (a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property; (b) yearly leasehold payments or ground rents on the Property, if any; (c) yearly hazard or property insurance premiums; (d) yearly flood insurance premiums, if any; (e) yearly mortgage insurance premiums, if any; and (f) any sums payable by Borrower to Lender, in accordance with the provisions of paragraph 8, in lieu of the payment of mortgage insurance premiums. These items are called "Escrow Items." Lender may, at any time, collect and hold Funds in an amount not to exceed the maximum amount a lender for a federally related mortgage loan may require for Borrower's escrow account under the federal Real Estate Settlement Procedures Act of 1974 as amended from time to time, 12 U.S.C. Section 2601 et seq. ("RESPA"), unless another law that applies to the Funds sets a lesser amount. If so, Lender may, at any time, collect and hold Funds in an amount not to exceed the lesser amount. Lender may estimate the amount of Funds due on the basis of current data and reasonable estimates of expenditures of future Escrow Items or otherwise in accordance with applicable law.

The Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Lender, if Lender is such an institution) or in any Federal Home Loan Bank. Lender shall apply the Funds to pay the Escrow Items. Lender may not charge Borrower for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Lender pays Borrower interest on the Funds and applicable law permits Lender to make such a charge. However, Lender may require Borrower to pay a one-time charge for an

The westerly 600.00 feet of Government Lot 5 of Section 11, Township 138 North, Range 42 West of the Fifth Principal Meridian in Becker County, Minnesota, less the northerly 600.00 feet of said westerly 600.00 feet, said westerly 600.00 feet is measured at a right angle to and is parallel with the west line of said Government Lot 5 and said northerly 600.00 feet is measured at a right angle to and is parallel with the north line of said Government Lot 5.

SUBJECT TO an easement for public road purposes over, under and across that part of the southerly portion of the above tract which lies within 33.00 feet of the centerline of an existing public road as said existing public road is located and established on February 16, 2000.

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Wayne Willette
Cheri Willette

MEMORANDUM OF LAW

Debtors

Chapter 7, Case No. 04-60984

New Century Mortgage Corporation ("Movant"), submits this memorandum of law in support of its motion for relief from the stay in the above-entitled matter.

FACTS

Movant holds a valid, perfected mortgage on real property owned by the Debtors. On the date of filing, the Debtors were delinquent under the note and mortgage. Since this case was filed Debtors have made no payments to Movant and the arrears total \$7,927.84.

ARGUMENT

1. Under Section 362.(d)(2) of the Bankruptcy Code, relief from the automatic stay shall be granted upon request of a creditor "for cause, including the lack of adequate protection of an interest in property of such creditor." The Debtors in this case have failed to make payments required by the note and mortgage for a period of more than 4 months. Debtors have not otherwise provided Movant with adequate protection of its interest in the property. Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay. In Re: Video East, Inc., 41 B.R. 176 (Bkrcty. E.D. Pa. 1984); In Re: Frascatore, 33 B.R. 687 (Bkrcty. E.D. Pa. 1983).

2. Pursuant to §362(d)(2) of the Bankruptcy Code, relief from the stay is appropriate where Debtors have no equity and the property is not necessary to an effective reorganization.

11 U.S.C. §362(d)(2). See, In Re: Gellert, 55 B.R. 970 (Bkrcty. D. N. H. 1983). In this case the

balance due Movant is \$182,753.72. The value of the homestead is approximately \$159,000.00.

Clearly, the Debtors have no equity in the property, and as this is a Chapter 7 case, the property is not necessary to an effective reorganization.

CONCLUSION

Movant is entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(1) for cause, where its interest in the secured property is not adequately protected. Movant is also entitled to relief from the automatic stay pursuant to 11 U.S.C. §362(d)(2) when Debtors have no equity, and when the property is not necessary to an effective reorganization.

Movant respectfully requests an Order of this Court modifying the automatic stay consistent with the attached proposed Order.

Dated: September 29, 2004

USSET & WEINGARDEN P.L.L.P

By: /E/ Paul A. Weingarden/Brian H. Liebo
Paul A. Weingarden, #115356
Brian H. Liebo #277654
Attorney for Movant
4500 Park Glen Road, #120
Minneapolis, MN 55416
(952) 925-6888

U.S. BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Wayne Willette
Cheri Willette

Debtors

UNSWORN DECLARATION
FOR PROOF OF SERVICE

Chapter 7, Case No. 04-60984

Erin Kay Buss, employed on this date by USSET & WEINGARDEN, attorney(s) licensed to practice law in this court, with office address of Suite 120, 4500 Park Glen Road, Minneapolis, Minnesota 55416, upon penalty of perjury, declares that on September 29, 2004, I served the annexed Notice of Hearing and Motion for Relief from Automatic Stay upon each of the entities named below by mailing to them a copy thereof by enclosing same in an envelope with first class mail postage prepaid and depositing same in the post office at Minneapolis, Minnesota, addressed to each of them as follows:

Office of the United States Trustee
1015 U.S. Courthouse
300 South Fourth Street
Minneapolis, MN 55415

Tamara L. Yon
Chapter 7 Trustee
P.O. Box 605
Crookston, MN 56716

James W. Shoemaker
Attorney at Law
P.O. Box 1026
Detroit Lakes, MN 56502

Wayne Willette
Cheri Willette
21636 North Pearl Lake Road
Detroit Lakes, MN 56501

/E/ Erin Kay Buss
Erin Kay Buss

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Wayne Willette
Cheri Willette

ORDER

Debtors.

Chapter 7, Case No. 04-60984

The above entitled matter came on for hearing upon motion of New Century Mortgage Corporation, ("Movant"), pursuant to 11 U.S.C. Section 362 on October 26, 2004, at the U.S. Bankruptcy Court, Fergus Falls, Minnesota. Appearances were as noted in the record. Based upon the evidence adduced at said hearing, the arguments of counsel, and the Court being fully advised of the premises,

IT IS HEREBY ORDERED THAT:

The automatic stay imposed by 11 U.S.C. §362 is hereby terminated as to the real property over which the Movant, its successors and/or assigns, has an interest, said property legally described as follows, to-wit:

The westerly 600.00 feet of Government Lot 5 of Section 11, Township 138 North, Range 42 West of the Fifth Principal Meridian in Becker County, Minnesota, less the northerly 600 feet of said westerly 600.00 feet, said westerly 600.00 feet is measured at a right angle to and is parallel with the west line of said Government Lot 5 and said northerly 600.00 feet is measured at a right angle to and is parallel with the north line of said Government Lot 5.

SUBJECT TO an easement for public road purposes over, under and across that part of the southerly portion of the above tract which lies within 33.00 feet of the centerline of an existing public road as said existing public road is located and established on February 16, 2000.

Movant may proceed to foreclose its mortgage in accordance with Minnesota Statutes. Movant's request for attorneys fees and costs shall not be considered as this is governed by state law. Notwithstanding Federal Rules of Bankruptcy Procedure 4001(a)(3), this order is effective immediately.

Dated this ____ day of _____, 2004.

Judge of the Bankruptcy Court

